

# State of Utah

## Title and Escrow Commission Meeting

### Meeting Information

Date: **November 8, 2006**

Time: 8:30am

Place: **Room 4112, State Office Bldg**

### Members

#### *Commission Members*

(Attendees=x)

xChairperson, Darwin L. Johnson, *Wasatch* xJoyce W. Clark, *Washington*

xDavid M. Lattin, *Salt Lake*

xGlen W. Roberts, *Utah*

xR. Curt Webb, *Cache*

#### *Department Staff*

xJohn E. "Mickey" Braun, Jr.  
*Ass't Commissioner*

xPerri Babalis  
*AG Legal Counsel*

Darrel Powell  
*Dir. Market Conduct*

Mark Kleinfeld  
*Admin. Law Judge*

xGerri Jones  
*MC Examiner*

xSheila Curtis  
*MC Examiner*

xJilene Whitby  
*PIO/Recorder*

#### *Visitors*

Joseph McPhee

Jeff Jensen

Larry Blake

## MINUTES

### **I. Welcome and Introductions by Darwin L. Johnson, Chair**

Darwin began the meeting at 8:35 a.m.

### **II. Adoption of Minutes of Previous Meeting**

Joyce **moved** to accept the minutes without change and David seconded it. The vote was unanimous in favor of the motion.

### **III. Review & Concur with Licensee Report**

Curt made the **motion** to concur with the October Licensing Report. Joyce seconded the motion and the vote was unanimous.

### **IV. Number of Open & Closed Cases / Mickey**

The report was not ready. **Mickey promised to have it for the next meeting.**

### **V. Review & Concur with Enforcement Case Report**

- **Charity Title:** The primary violation was failure to file rates. The proposed penalty was \$7,500 forfeiture, six months probation and timely payment of fine. Curt asked how this could happen? Mickey replied that the department has not always taken time to review all rates. The department would take steps to avoid this happening in the future. It was noted that the owner had been in business with another agency and had recently started his own agency. He should have known the requirements. Joyce made a **motion** to approve the penalty and David seconded it. The vote was unanimous.
- **Atlas Title:** Their violation was providing fresh flowers to an agency. The proposed penalty was \$750 forfeiture, four months probation, and timely payment of fine. Darwin thought the fine was not high enough considering Atlas knew it was against the law and had been done for a long period of time. Joyce and David agreed. Glen **moved** to change the forfeiture to \$2,000 and David seconded it. The vote was unanimous.
- **Principle Title:** The violation was failure to file rates. These people are new to the business. The proposed penalty was a \$500 forfeiture, four months probation, and timely payment of fine. Curt **moved** to approve the penalty and Glen seconded it. The vote was unanimous.

**Matthew B. Sager:** Sager failed to pay a \$35 fine for failing to notify the department of his change in address. The recommended penalty was \$100 plus the original fine of \$35. Darwin confirmed that if this was not paid in ten days then an Order to Show Cause of Why License Should Not Be Revoked would be issued. Glen noted that Sager no longer works for the title agency listed on the report. Joyce made a motion to approve the penalty and Curt seconded it. The vote was unanimous.

VI. **Old Business**

- **Status of R592-2 / Mickey**

The rule is in a comment period until December 1, 2006.

- **Action to be taken on R592-5**

- Curt made a **motion** to change the direction they were going and consider standardizing escrow procedures and documentations. Joyce seconded it.
- Curt provided presentation on the motion. He did not know when the industry began doing splits. About five years ago the Utah Insurance Department (UID) proposed a rule to eliminate splits. This caused polarization on the issue. Each side established their argument for or against the rule. For the past five years splits have become more popular. Now we are threatening to do away with them again. A hearing has been held and the arguments on each side are the same. The difference is that we have had a field trial allowing us to test the validity of the arguments. He estimated that of the 170 title companies each would do an average of 1,500 transactions a year, totaling 250,000. If 40% are purchases and 50% of those are splits that would total 51,000 splits in one year alone. Sheila said she had three complaints on her desk. Let's say they are viable. That means you have 1/17,000 complaints. This does not back the notion that splits cause problems.
- Joyce said she backed Curt's motion because a recent study showed that no one opposed standardizing escrow transactions. Standardization will prohibit problems we have had with splits.
- Glen expressed concern that the Commission had talked about this issue for the past year and last month voted to file additional changes to the rule and send it for another comment period. Now the Commission wants to abandon that effort and instead fix the escrow instructions. He noted that parties in a transaction often change conditions to a deed without telling the other party. He suggested people were settling complaints among themselves. Another concern was that of having two agents as a fiduciary.
- Curt said there was no justification in the code for rule R592-5. He said companies have created escrow instructions and procedures to help the process work correctly.
- Glen asked if they worked right. He didn't think so. He felt the Commission's role was to defend the consumer, not the title industry. He asked how split closings were better for the customer? Joyce disagreed. The Commission is the eyes and ears of the industry as well as the public. If we are not to represent the industry then why have a Commission? Just leave it to the department.
- Curt called for the Question. His motion was to abandon the direction the Commission was headed regarding splits and instead standardize escrow procedures and incorporate the good things we have seen that make them better.
- Joseph McPhie asked if he could first make a presentation on scenarios they are running into. He made the point that there are already laws in place to eliminate split closings. A rule is not necessary. (Joseph was unable to make the presentation due to technical problems with his computer.)
- Larry Blake said escrow instructions were violated every day in regards to the handling of money. How would this be corrected by escrow instructions? National lenders think we are handling the money when we are not. We are violating a lot of

rules and will be sued some day. We could help the public better if we could see both sides of the instructions.

- Joseph McPhie said that all conditions of the escrow must be met before the closing.
- Jeff Jenson of Landmark Title made a presentation. He noted that the industry was not forced into breaking the law. The seller does not want to release the deed until they receive the money. Today the seller sends the deed to the buyer with the requirement that it not be filed until they receive money from the lender. No laws or instructions are violated. You almost have a single company with the buyer's title company handling the documents and the money.
  - Glen said it sounded like a single fiduciary. How does the seller's title company get paid? He did not see why the seller had a title company. Jeff said it was because the seller wants to use the same title company for each transaction.
  - Curt said most of the responsibility was on the buyer's title company. Jeff suggested having a courtesy closing for the seller's title company. He also suggested having standardized escrow instructions. It allows buyer and seller to go to the same title company each time they do business.
  - Glen noted that the industry has been operating under a very good market; as a result, when someone messes up a deal usually a loss is not suffered because one can get more money.
  - Curt restated his **motion** to abandon the rule, R592-5 and go a new direction, to standardize escrow procedures in a format that can be used industry wide. An affirmative vote is to change directions. Darwin called for the vote. Two voted for the motion and two against it. Darwin acted as the tie-breaker. He gave the reasons behind his vote then voted in favor of the motion to go a new direction.
- Break 10 a.m.
- Reconvened 10:17 a.m.
- **Summary Judgment Hearing:** Perri indicated that the hearing on § 31A-23a-407 is scheduled for January 12, 2007, at 2:30p.m. in the Federal District Court before Judge Cassell. She did not know if the constitutionality issue would be brought up, if it is, it is likely to be brief.
- **Prioritizing Topic of "Trustees Acting for the Developers"**  
This was set-aside for the time being.
- **Where go from here?**  
Joyce asked Gerri to send an electronic copy to the Commission, of the MBA Draft General and Specific Closing Instructions, the Forbes Article on the title insurance industry and ALTA's Response to the article. Darwin will ask Jeff for a copy of his escrow instructions and Glen will contact ULTA for any they are aware of and to advertise that the Commission is looking for samples.

## VII. New Business

- **Discuss Flip Bulletin**  
Gerri said the bulletin was not ready to review yet. Gerri provided information about flips. She said she would try to obtain information from the NAIC working group as to whether they were studying the issue. She suggested asking ULTA to form a study group.
  - Glen did not think further study was necessary.
  - Gerri noted that the bulletin she is working on addresses the "good funds issue."
  - Glen said the bulletin would just tell people what the law required. Curt said that if the law is unclear it will need to be changed legislatively.

- **Power Point Presentation on Flips (10 min.)** / Joseph McPhie  
Due to technical problems he was unable to give the presentation. See above.
- **Legislation** / Mickey
  - Mickey referred to a Forbes article stating that the title industry has many problems. The article seems to have spurred legislative interest. Glen said ULTA prepared a good rebuttal to the article.
  - Perri suggested working with the department on the privacy issue.
  - Mickey noted the department was working on legislation to dedicate department fees to the department and not the general fund. He did not know if it would include forfeitures. It will need buy-in from the industry.
  - Mickey also noted that the penalty matrix is being revised. If penalties don't reach a certain threshold then they are not effective. The matrix needs to be clear that listed penalties are recommendations and are subject to change by the Commission. Gerri said proposed matrix changes would be given to the Commission to review.
  - Glen asked if the Commission could help improve case flow? Mickey didn't know if the department could delegate investigative authority to the Commission. They could help find resources for the department. Workload is impacted by the detailed requirements of the laws and regulations on the industry.
- **Priority List**
  - Curt suggested working on the next item on the Commissions list of priorities – "Enforcement." It was agreed that they would discuss it at the next meeting.
  - Joyce said if they were more informed as to what the department's caseload was they might know how they could help move things along? Curt did not think they should be shown names of licensees involved in enforcement cases. He said raw numbers about the caseload helped them see what was being done and could be shared with the industry. Mickey said information could be provided about date case received, the nature of the violation, when something done with it, and when it was concluded and the reason it was closed. Gerri noted that often they work in conjunction with other state agencies, which impacts timing on the development of a case. Mickey said he would have it for the next meeting.
- Joyce made a **motion** to change the December meeting date to the 6<sup>th</sup>. Glen seconded the motion and the vote was unanimous.

VIII. **Other Business** from Committee Members

IX. **Reminder:** Next Liaison Meeting: January 8, 2007 Monday

X. **Adjourned** at 11:11 a.m. Glen **moved** to adjourn and Joyce seconded it.

XI. **Next Meeting:** December 6, 2006, 8:30 a.m., Room 5112

***Next Meetings***

*8:30 a.m.*

December 6, 2006, Rm 5112

January 10, 2007	July 11, 2007
February 14, 2007	August 8, 2007
March 14, 2007	September 12, 2007
April 11, 2007	October 10, 2007
May 9, 2007	November 14, 2007
June 13, 2007	December 12, 2007